

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

ADM TRUCKING, INC., A DIVISION OF ADM CO.
Employer,

and

25-UC-144747

BAKERY, CONFECTIONERY, TOBACCO
WORKERS & GRAIN MILLERS INTERNATIONAL UNION,
AFL-CIO-,CLC LOCAL 103-G
Petitioner

DECISION AND
ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on February 11, 2015, before a hearing officer of the National Labor Relations Board.¹

I. ISSUE

Bakery, Confectionery, Tobacco Workers & Grain Millers International Union, AFL-CIO, CLC Local 103-G seeks to clarify the bargaining unit that exists at ADM Trucking, Inc., a division of ADM Co. Specifically, the Union seeks to include a group of five truck drivers from the Employer's terminal located in Springfield, Illinois, into an existing bargaining unit (the Decatur Unit) consisting of approximately 159 truck drivers, mechanics, and utility employees at the Employer's terminal located in Decatur, Illinois. The Union contends that under *Premcor, Inc.*, 333 NLRB 1365 (2001), the Springfield employees are performing the same work as the existing Decatur employees and that they should be viewed as part of the Decatur Unit. In the alternative, the Union contends that the Springfield employees are an accretion to the Decatur Unit, as the two groups have no separate identities and possess an overwhelming community of interest. The Employer contends that the Union's petition is untimely because it was filed during

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.

the term of a collective bargaining agreement where the contract clearly defines the bargaining unit. If the petition is timely, the Employer argues that the *Premcor* standard does not apply because the drivers at the Springfield Terminal are not performing the same job duties as the drivers from the Decatur Terminal and because the collective bargaining agreement between the parties narrowly defines the unit to include only drivers at the Decatur Terminal. Further, the Employer contends that accretion of the Springfield employees into the Decatur Unit is not appropriate because the two groups have substantially separate identities and possess no community of interest.

II. DECISION

The evidence demonstrates that even though the Springfield employees perform general driving duties similar to the Decatur Unit employees, these driving duties are no more unique than the driving duties performed by the Employer's other non-union drivers at its other non-union remote terminals. Thus, they do not perform the same basic functions historically performed by the Decatur Unit employees such that they should be considered part of the Unit.. Further, the Springfield employees have maintained a separate identity and do not share such an overwhelming community of interest with the existing bargaining unit that a separate unit would be inappropriate and only accretion is appropriate. The Petition is therefore dismissed.

III. STATEMENT OF FACTS

A. Bargaining History

The Employer is engaged in the transportation of raw agricultural materials as well as processed and finished agricultural products and chemicals produced by its parent, Archer Daniels Midland. The Employer operates 36 transportation terminal facilities across the United States and employs over 800 drivers; however, the terminals located at 2501 North Brush College Rd., Decatur, Illinois 62526 (the Decatur Terminal) and at 3333 Singer Rd., Springfield, Illinois 62703 (the Springfield Terminal) are the only facilities involved in this petition. The Employer's corporate offices are located in Decatur, Illinois. The Decatur Unit and the truck drivers at the Employer's Langhorn, Pennsylvania Terminal are the only employees of the Employer who are currently represented by a union.

The Union and the Employer have been parties to various collective bargaining agreements, with the most recent collective-bargaining agreement that covers the Decatur Unit being effective from February 1, 2013, to February 1, 2016. The Union represents the following approximately 159 employees of the Employer:

Truck Drivers, Mechanics and Utility Employees employed at its Decatur Trucking facility located at 2501 North Brush College Road, Decatur, Illinois;
BUT EXCLUDING all supervisory trainees, office and clerical employees, professional employees, parts department employees, trainees and employees of ADM Trucking, Inc. Drivers and Mechanics Training School, janitors, security

watchmen, and guards and supervisors as defined in the Act, and all other employees.²

The Union has not historically claimed jurisdiction over any of the Employer's numerous satellite trucking operations, with the exception of the Employer's Taylorville, Illinois facility (the Taylorville Terminal) from 2001 through 2005. The Taylorville Terminal was established in 2001 as a relay point for loads traveling between Decatur, Illinois and St. Louis, Missouri in order to maximize driving hauls between the two terminals while complying with Department of Transportation (DOT) regulations restricting drivers to a maximum of ten hours of drive time per shift. The distance between the Taylorville Terminal and the Decatur Terminal was 31.5 miles. The Taylorville Terminal was staffed with about five to ten existing Decatur Unit drivers who lived in the Taylorville area. The Employer voluntarily recognized the Union for the Taylorville Terminal. The Taylorville Terminal was included in the recognition clauses for the collective bargaining agreements for the 2001 through 2004 term and the 2004 through 2007 term. Due to a change in DOT driving requirements from a maximum of 10 hours of drive time to 11 hours of drive time per shift, there was no longer a need for the Taylorville Terminal as a relay point between Decatur and St. Louis and it closed in 2005. The drivers at the Taylorville Terminal were transferred back to the Decatur Terminal. Recognition of the Taylorville Terminal has not been included in the collective bargaining agreements since 2007.

B. Decatur Terminal

The Decatur Terminal contains an office, a shop location that provides maintenance for all equipment, and a wash bay that handles food-grade washing before trucks are loaded. Across the street from the Decatur Terminal is the Employer's Central Dispatch, which is responsible for dispatching all trucks fleet-wide for all of the Employer's terminals. The Decatur Unit includes approximately 129 Truck Drivers, 20 Mechanics, and 10 Utility Employees. The Truck Drivers include the following classifications: Over-the-road ("OTR") Drivers, Local Drivers, City Drivers, and Hybrid Drivers.

The Decatur Terminal Truck Drivers transport products produced by the Employer's parent, ADM, between ADM's processing plants located in Decatur, Illinois; transport freight from third-party entities located in and around Decatur, Illinois to the Decatur Terminal and to ADM's processing plants in Decatur, Illinois; and transport raw material products from St. Louis, Missouri to ADM's plants in Decatur, Illinois. OTR Drivers make overnight deliveries, which require layovers. Local Drivers make deliveries and return to the Decatur Terminal the same day. City Drivers travel in shorter trips to make deliveries in the greater Decatur, Illinois area, which is considered to be within Decatur city limits and within a fifty-mile radius of the Decatur area. Hybrid drivers are usually local drivers who sometimes accept overnight runs. The majority of drivers in the Decatur Unit are local drivers. The Mechanics are responsible for servicing and maintaining the tractors. The Utility employees are responsible for the inspection and repair of equipment and trucks.

² At the hearing the parties stipulated that this was the appropriate bargaining unit. In addition, this is the unit currently recognized in the collective bargaining agreement between the Employer and the Union.

Drivers from the Employer's various terminals haul many different types of products depending on the Employer's business needs, including different blends of oils, sweetener, caustic soda, different variations and blends of alcohol, fertilizer, flour, and different food grade agricultural products and chemicals. Routes for the drivers from the Employer's terminals are determined based on several factors such as business needs for a specific day, sales, deliveries, which plant has a certain product, and which drivers are available for service for a given day. Central Dispatch in Decatur considers these factors when determining which driver from what location will pick up product from certain plants to deliver to certain customers, and as a result there are no dedicated lines of transportation for the Employer's various terminals. Because of variance in the routes, drivers from the Employer's other terminals routinely deliver or pick up products at the Decatur Terminal. Central Dispatch in Decatur dispatches all drivers for the Employer regardless of location. Scott Morlock is the Employer's Dispatch Manager who oversees Central Dispatch and the dispatchers who give the drivers their assignments. Each dispatcher has a set number of locations that they dispatch for, and they assign loads to the drivers. For instance, two separate dispatchers handle assignments out of the Decatur Terminal: one dispatcher handles the local drivers and hybrid drivers, and another dispatcher handles the OTR drivers. Meanwhile, a separate dispatcher handles the assignments for the Springfield Terminal; the Employer's Terminal in Quincy, Illinois; and the Employer's Terminal in St. Louis, Missouri. In addition, each of the Employer's terminals typically does not have assigned equipment unless there is specific equipment set up for a specific product that is used in a particular plant. Also, trailers are allocated to the Employer's different terminals based on business needs.

When drivers are hired at any of the Employer's facilities they participate in orientation and training, often with a group of drivers from other terminals. Training is often completed at the Decatur Terminal regardless of a driver's work location. Drivers will receive training on their duties from driver trainers. Also, drivers participate in quarterly safety meetings, which are held at multiple locations, including Decatur. Because drivers are required to attend safety meetings, various meetings are held to accommodate the drivers' varying schedules. Drivers from other terminals also attend the safety meetings at Decatur. Qualifications for drivers may vary among the different locations. Generally, drivers are required to have a Commercial Driver's License (CDL), a tanker certification, and most drivers have a HAZMAT certification. Decatur Drivers are required to have all three qualifications.

The wages and benefits for the Decatur Unit drivers are negotiated and set by their collective bargaining agreement. Article IV of the Union and Employer's 2013 through 2016 Collective Bargaining Agreement defines the Decatur Unit's job classifications and specific rates of pay for each classification. For instance, the delay rate³ for a Truck Driver out of the Decatur

³ A delay rate is provided to drivers when they have a task to complete but for some reason they are delayed in a location. For instance, a driver may be delayed from leaving his/her home terminal because a load was not ready to haul, or a driver may be delayed at a customer's location if a customer is not ready for a delivery.

Unit is \$13.87. The mileage rate for the Decatur Unit is \$0.386.⁴ Article V of the same collective bargaining agreement also notes that an employee's seniority in the Decatur unit "shall apply only to employment at the Company's Decatur Trucking facilities, 2501 North Brush College Road, and shall not apply elsewhere except as provided in the Letter of Understanding, Permanent Transfers Between Decatur Corn, Soybean and Trucking Operations."

Wages for the Employer's employees in the non-union facilities are determined by the Employer's Labor Relations department (located in the Decatur corporate office) based on the location of the Employer's facility and the rate of pay for the market within that area. Medical plans are the same for all of the Employer's employees, regardless of union or non-union status. There are three pension programs offered by the Employer: a salaried pension program, an hourly non-union pension program, and a union-negotiated pension program. As for 401k plans, the Decatur Unit's plan is negotiated between the Union and Employer, while the 401k plans for non-union employees is the same for all other locations. The Employer's Benefits Group administers benefits plans for salaried and non-union employees.

The Employer's largely centralized organizational structure contains various departments and levels of supervision. In addition to the Central Dispatch that dispatches all of the trucks fleet-wide, the Employer also has a centralized Corporate Fleet Manager, who handles all purchasing, leasing, maintenance, and recommendations for the Employer's fleet. The Employer's Recruiting Group, headed by a Hiring Manager, handles all recruiting and hiring for the fleet. The Employer's Corporate Trainer, evaluates the credentials and experience of employee applicants. The Hiring Manager and Corporate Trainer are responsible for hiring drivers for the Decatur Terminal and other Employer terminals, including the Springfield Terminal. The Employer's Director of DOT Compliance is responsible for the Employer's operating authorities, which include trucking, A & I (Animal Nutrition Group), Golden Peanut (peanut operation), and the Corporate facility (grain operation). The Employer's Director of Operations oversees the location managers (or terminal managers). The terminal managers are responsible for the Employer's different individual locations. The Employer's smaller terminals are remotely managed. This results in some managers traveling between terminals while some of the larger facilities, such as Decatur, Illinois; Cedar Rapids, Iowa; and Clinton, Iowa have an on-site manager. Under the terminal managers are the supervisors who directly oversee the drivers. The number of supervisors at a location is dependent on the number of drivers at a given location.

The Decatur Terminal has several managers and supervisors. The Employer's Terminal Manager, Raymond Neff, manages the Decatur Terminal and surrounding terminals including Peoria, Illinois; Springfield, Illinois; Effingham, Illinois; Creve Couer, Illinois, and Indianapolis, Indiana. Neff manages the labor force with the assistance of supervisors who handle the day-to-day labor force. Neff testified that he does not have day-to-day contact with the Springfield Terminal employees. Neff also deals with business plans, traffic considerations for location placement, costs, and he works with the Fleet Manager to identify payload improvements.

⁴ The Employer uses the Rand-McNally Mile Marker Guide to set mileage and establish rates. This system, which has been used in the trucking industry for many years, sets mileage based on the post office address within a zip code in different locations.

Joshua Wilson is the Employer's Remote Terminal Manager for 10 of the Employer's terminals. Wilson was hired by the Employer in August 2014 as the Remote Terminal Manager and previously worked as a Second Shift Driver Supervisor at the Decatur Terminal. Wilson's office is located in the Decatur Terminal. Around November 2014, Wilson began assisting Terminal Manager Raymond Neff with supervision of the Employer's other terminals. The terminals Wilson supervises include the Employer's locations at Springfield, Illinois; Effingham, Illinois; St. Louis, Missouri; Quincy, Illinois; Morton, Illinois; Creve Coeur, Illinois; Ottawa, Illinois; Frankfort, Indiana; Evansville, Indiana; and Indianapolis (Beech Grove), Indiana. As the Remote Terminal Manager, Wilson travels to the terminals under his supervision and supervises around 65 drivers. Wilson conducts quarterly safety meetings and he oversees day-to-day paperwork, such as delay slips, driver logs, log violations, and payroll. Wilson also assists Central Dispatch with coordinating employee hours based on business needs. In addition, Wilson assists Dispatch Manager Scott Morlock and Hiring Manager Debbie Sarko with decisions about whether to transfer a driver to a different terminal. Wilson currently spends about 60 percent of his time supervising the Decatur facility and 40 percent of his time supervising the other terminals; however, Wilson will be transitioning to supervising primarily the other terminals outside of Decatur. If Wilson is not available to supervise the Decatur terminal, then Raymond Neff, the Employer's Terminal Manager, handles those supervisory needs.

Also located at the Decatur Terminal are the Employer's City Manager, Todd Moore, and various City Supervisors, who only supervise the Decatur Terminal. The City Supervisors who assist with driver supervision include Graham Daniels, Justin Dutz, Brandon Justice, and Gavin McCoy. The City Supervisors do not supervise the Springfield Terminal.

C. Springfield Terminal

Due to increased business causing the Employer to farm out work to third-party carriers, the Employer decided to increase its fleet size and handle the freight internally by opening the Springfield Terminal. The Springfield Terminal, which began operating on January 5, 2015, operates as a relay point between Peoria, Illinois; Quincy, Illinois; and Decatur, Illinois. Around January 2015, the Union's Local President, Joseph Lee, contacted the Employer and asked for recognition of the Union at the Springfield Terminal. The Employer denied the Union's request for recognition.

The Springfield Terminal is located 45 miles from the Decatur Terminal, and it contains a gated entrance with a fenced-in gravel lot and a drop pad that is capable of holding 13 loaded trailers. It also has a small construction office-style trailer. The tractors used by the Springfield Terminal come from an idle pool where the Employer keeps excess equipment that is not designated for any specific terminal. If a mechanic is needed at the Springfield Terminal, the Springfield location will call the Decatur shop, which will then send a service company to fix the issue at the Springfield Terminal.

The Springfield Terminal only employs local drivers, and the Employer has no plans to hire employees who are nondrivers at that facility. As for recruiting and advertising for job vacancies at the Springfield Terminal, the Employer has used an ADM job board on the internet

as well as radio and newspaper advertising in the Springfield area. The Employer is still advertising to hire additional drivers, with a goal of employing 10 Springfield local drivers. The Employer has no plans to hire OTR Drivers at the Springfield Terminal because the Employer's current OTR fleet is sufficient for the Employer's region. Also, the Employer does not plan to hire City Drivers at the Springfield Terminal because there is no plant in Springfield that would require the need for City Drivers. Job vacancies for the Springfield Terminal were not posted under the process provided for under the Decatur Unit's collective bargaining agreement. When the Springfield Terminal was established, there were no job reductions or lay-offs from the Decatur Terminal.

Springfield drivers are required to have HAZMAT certification, a CDL, and tanker certification. Springfield drivers do not have any additional qualifications or skills that are required that is different than other drivers. Also, Springfield drivers do not have any special training that is different from other drivers. The Springfield drivers are directly supervised by Remote Terminal Manager Joshua Wilson. The Employer's Labor Relations department at the corporate office in Decatur, along with assistance of Terminal Manager Raymond Neff, set the wages and benefits for the Springfield drivers in the same manner that it does for the Employer's other non-union facilities. The delay rate for Springfield truck drivers is \$15.18. The mileage rate for Springfield drivers is \$0.448. Springfield drivers are offered corporate benefits such as health insurance, life insurance, dental, vision, and a 401(k) that is offered to all ADM employees (not just drivers).

Springfield drivers have the capability of hauling the types of products that are transported between the Employer's other terminals (as discussed above); however, the types of products that Springfield drivers transport changes everyday based on the Employer's daily business needs. Springfield drivers perform their routes in conjunction with processing plants in Quincy, Illinois; St. Louis, Missouri; Peoria, Illinois; Decatur, Illinois; and other locations. Aside from picking up products from plants, they also perform deliveries for customers. The Springfield drivers perform similar day-to-day job duties, responsibilities, and operations as the Employer's other remote terminals; however, the customers in geographic areas differ. Springfield drivers spend about 90 to 95 percent of their work day driving, and the remainder of their time is spent interacting with customers.

The Springfield drivers access their trip sheets (daily assignments) through a web site called EADM, where they have a user name and login where they access their dispatch for the day. It details where the drivers are starting, the different stops that they will make for the day, and what product they will be driving. The Springfield drivers can also receive their assignments over the phone from Central Dispatch. If a Springfield driver is unavailable to complete an assignment, Central Dispatch will first consider other drivers in Springfield to fill the assignment and if no one is available, then Central Dispatch will consider a driver from any other of the Employer's terminals. Springfield employee hours are based on needs identified by Central Dispatch and then coordinated between the employee, Remote Terminal Manager Joshua Wilson, and dispatch.

The Springfield Terminal currently employs five local drivers. One Springfield driver was voluntarily transferred from the Decatur Unit to the Springfield Terminal effective on

January 5, 2015. Another Springfield driver was an OTR driver at Decatur who resigned around August 2014 from Decatur and later rehired on at Springfield after applying through the Employer's website. The other three Springfield drivers are all new hires without previous experience at the Decatur Terminal or at any other of the Employer's terminals. One of the Springfield drivers without previous work experience with the Employer was hired on December 15, 2014, he completed his initial training in Decatur, and he began working at the Springfield Terminal on January 5, 2015, along with the two Springfield drivers who had previous experience working at the Decatur Terminal. The other two Springfield drivers with no previous work experience at the Decatur Terminal were hired sometime in January of 2015. The three Springfield drivers without previous work experience at the Decatur Terminal are all considered probationary employees. The two Springfield drivers with previous work experience at the Decatur Terminal are not considered probationary employees.

One Springfield driver was a local driver and a driver trainer at the Decatur Terminal. In late 2014 that employee, who lives in the Springfield area, approached the Employer's Corporate Trainer and Remote Terminal Manager Joshua Wilson and stated that if the Employer opened a Springfield terminal that he would like to be the driver trainer for that terminal. When Terminal Manager Raymond Neff heard that this employee was interested in the Springfield location, Neff told him that there was a business need at the Springfield location for a driver trainer. The Employer uses driver trainers at its other terminals.

This employee testified that he knew the Springfield Terminal would be non-union because all of the Employer's other facilities are non-union, so there were no discussions about his union status when he inquired about transferring. The employee inquired only about whether he would be able to keep his seniority from working at Decatur, which the Employer permitted him to maintain along with his benefits and pension plan. Other new hires for Springfield do not have the same benefit plan as this employee. The Springfield drivers receive higher pay working at the Springfield Terminal than drivers at the Decatur Terminal. A Springfield driver with previous work experience at the Decatur Terminal testified that he maintains contact with drivers in many of the Employer's locations, including Decatur, St. Louis, and Peoria because he has trained drivers in many different locations and he may see them while on routes. The truck driven by this employee came from the Decatur terminal, as it was a driver trainer truck that contains two air-ride seats. A truck was transferred from the idle pool back to the Decatur Terminal to replace this employee's truck.

IV. DISCUSSION

As set forth above, the Union contends that under *Premcor, Inc.*, 333 NLRB 1365 (2001), the Springfield employees are performing the same work as the existing Decatur employees and that they should be viewed as part of the Decatur Unit. If the *Premcor* standard does not apply, then the Union argues that the Springfield employees are an accretion to the Decatur Unit because the two groups have no separate identities and possess an overwhelming community of interest. The Employer argues that *Premcor* is not the appropriate standard and that the Springfield employees should not accrete into the Decatur Unit because the two groups have substantially separate identities and possess no community of interest. The Employer also argues that the petition is untimely.

A. Timing of Petition

The Employer argues that the petition is untimely because under *Wallace-Murray Corp.*, 192 NLRB 1090 (1971), the Board will not entertain a unit clarification petition filed during the term of a collective bargaining agreement where the contract clearly defines the bargaining unit. The Employer contends that the parties' current collective bargaining agreement is effective from 2013 until 2016 and that the scope of the Decatur unit is expressly limited to the 2501 North Brush College Road facility and excludes "all other employees." The Employer also points to other sections of the agreement limiting the scope and coverage of the unit to the "Company's Decatur Trucking Facility."

A unit may be clarified in the middle of a contract term where the procedure is invoked to determine the unit placement of employees performing a new operation. *Crown Cork & Seal Co.*, 203 NLRB 171 (1973); *Alaska Steamship Co.*, 172 NLRB 1200 (1968). The Board refuses to clarify in midterm, however, when the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. To grant the petition at such a time would be disruptive of a bargaining relationship voluntarily entered into by the parties when they executed the existing contract. *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *Wallace-Murray Corp.*, 192 NLRB 1090 (1971).

Although the parties are in the middle of a contract term, the unit clarification procedure is necessary to determine whether the drivers performing a new operation at the Springfield Terminal should be placed in the existing Decatur Unit. Therefore, I find that the petition is timely.

B. Analysis Under *Premcor*

Unit clarification is the appropriate method "for resolving ambiguities concerning the unit placement of individuals who . . . come within a newly established classification of disputed unit placement." *Union Electric Co.*, 217 NLRB 666, 667 (1975). The Board will view a new classification as already belonging in the bargaining unit (rather than being added to the unit by accretion) if that new classification performs the same basic work functions historically performed by unit employees. *Premcor*, supra; *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001).

In *Premcor*, the employer established a central control room in a facility separate from its oil refinery and created a new "PCC" position, which performed essentially the same work as the "operator 1s" in the employer's facility, except with more advanced technology. The PCCs were hired from the bargaining unit and were all formerly operator 1s. Both positions were responsible for modulating the mix and flow of product based on production standards developed by management, maintaining continual communication with unit employees in the field in order to examine and correct malfunctions in the units, and issuing work permits to company mechanics and contractors. The Board found that despite the PCCs use of new technology, the new classification was essentially performing bargaining unit work.

The Union argues that the instant case is factually similar to *Premcor* in that the Employer here created a new facility and a new position at the Springfield Terminal that performs the same duties as the Decatur Unit Truck Drivers.⁵ The Union contends that the five Springfield drivers are Local Truck Drivers, and that the Decatur Unit has historically performed these duties over the last thirty years and was running the routes prior to the opening of the Springfield Terminal. The Union also argues that this case is factually similar to *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001). In *Developmental Disabilities*, the Board applied the *Premcor* standard when clarifying a bargaining unit of instructional employees at a children's services program to include a newly created therapy assistant/psychology position because the new position performed the same basic functions historically performed by the unit employees. In *Developmental Disabilities*, the employer filled the six new positions with employees from within the unit. The Board noted that the employees in the new positions worked with the same children formerly taught by unit members, they applied similar behavior analysis, and they had the same goals of behavior modification as used by unit members. Here, the Union argues that two of the Springfield positions were filled by former Decatur Unit members and that one Springfield driver began his training in Decatur. The Union also analogizes *Developmental Disabilities* with the instant case because the Decatur Unit performs local driver responsibilities and drove similar routes as the Springfield drivers.

The Employer argues that the *Premcor* standard does not apply since the Local Drivers at the Springfield Terminal are not performing the same job duties as the Local Drivers in the Decatur Terminal, except in the broadest possible sense. The Employer notes that the Springfield drivers are performing their duties at a distinct, separate location. The Employer also argues that this case is more like *AT Wall Company*, 361 NLRB No. 62 (2014). In *AT Wall*, the Board considered whether to clarify a bargaining unit of production employees who engaged in the tubing, stamping, and gun magazines manufacturing process to include new classifications established by the employer after it acquired the operations of another company. The Board in *AT Wall* decided that the *Premcor* standard was not appropriate given the restrictive definition of the unit in the collective-bargaining agreement (which listed 21 specific job classifications that were labeled by department and sometimes by product), and the fact that the new classification produced an entirely different product using different processes under different working conditions. The Employer contends that like in *AT Wall*, the recognition clause and other provisions of the Decatur Unit collective bargaining agreement narrowly define the unit to include only drivers at the Decatur Terminal, and that the Decatur Unit accrues seniority rights only at that location.

In the present case, the circumstances do not warrant application of *Premcor*; rather, the Board's traditional accretion standard is appropriate. Although the Springfield Terminal employs five local drivers, it does not have any OTR, City, or Hybrid Drivers like the Decatur Unit.

⁵ The Union also argues that the test set out by the Board in *The Sun*, 329 NLRB 854, 859 (1999), which is applied in unit clarification proceedings involving bargaining units defined by the work performed, is applicable here because the collective bargaining agreements states the positions performing the work at the Decatur Terminal and the pay rates for those positions. However, the test in *The Sun* is not applicable here because the Decatur Unit is clearly not defined by the work performed.

Although Springfield drivers may haul product in the same manner as Decatur drivers, the same can be said of the Springfield drivers in comparison to the Employer's drivers at all of its other non-union facilities. The types of products that Springfield drivers transport changes everyday based on the Employer's daily business needs, and their customers change based on the different geographic areas, similar to the Employer's other remote terminals. Decatur Drivers largely perform their routes in conjunction with the St. Louis Terminal and ADM plants and customers in the Decatur area. Meanwhile, Springfield drivers perform their routes in conjunction with processing plants in Quincy, Illinois; St. Louis, Missouri; Peoria, Illinois; Decatur, Illinois; and other locations, and Springfield ultimately acts as a relay point between Peoria, Illinois; Quincy, Illinois; and Decatur, Illinois. In addition, even though Springfield drivers do not have any additional qualifications, skills, or training than that is required of the Decatur Unit, the same can be said of drivers at the Employer's other remote terminals. Also, unlike *Premcor* and *Developmental Disabilities*, not all of the Springfield drivers were hired from within the Decatur Unit. Only one employee voluntarily transferred from Decatur, while the other four hired in through the Employer's website. Although that employee was a driver trainer at Decatur and now serves as one at Springfield, the use of driver trainers is common among the Employer's other remote terminals and is not unique to the Decatur Terminal. Also, despite one other employee having previously worked at the Decatur Terminal, he left his job at Decatur in August 2014 and reapplied to work at the Employer's Springfield terminal and did not begin working until January 5, 2015. The other three Springfield employees were new hires with no work experience at the Decatur Terminal. In addition, although one Springfield Driver began his training in Decatur, it is common practice for drivers from the Employer's other remote locations to begin their training in Decatur. Finally, similar to *AT Wall*, the parties' collective bargaining agreement narrowly defines the unit to include the Truck Drivers, Mechanics and Utility Employees employed at the Employer's Decatur Trucking facility located at 2501 North Brush College Road, Decatur, Illinois, and it specifically excludes all other of the Employer's employees. In weighing the factors identified above, I find that the record evidence clearly weighs against finding that the Springfield employees perform the same basic work functions historically performed by the Decatur Unit, and therefore the Board's traditional accretion standard is appropriate.

C. Accretion

When the *Premcor* standard is not satisfied, the Board will add or "accrete" the new classification to the unit "only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *CHS, Inc.*, 355 NLRB 914, 916 (2010), quoting *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270 (2005). In making this determination, the Board analyzes the standard community-of-interest factors: interchange and contact among employees, degree of functional integration, geographical proximity, similarity of working conditions, similarity of employee skills and functions, common supervision, and collective-bargaining history. *E. I. Du Pont, Inc.*, 341 NLRB 607, 608 (2004), citing *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001).

The Board usually views as "critical" the factors of employee interchange and common day-to-day supervision, and their absence will "ordinarily" defeat an accretion claim. *Frontier*

Telephone of Rochester, Inc., 344 NLRB 1270, 1271 (2005). Nonetheless, the Board also recognizes that “the normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.” *E. I. Du Pont*, supra, citing *The Great Atlantic & Pacific Tea Co.*, 140 NLRB 1011, 1021 (1963). The Board generally follows “a restrictive policy in finding accretions to existing units because the Board seeks to insure that the right of employees to determine their own bargaining representatives is not foreclosed.” *Archer Daniels Midland Co.*, supra, 333 NLRB at 675. Further, the doctrine of accretion will not be used where the employees sought to be included in an established bargaining unit may constitute a separate appropriate unit. *Passavant Retirement & Health Ctr., Inc.*, 313 NLRB 1216 (1994). As the Board stated in *Passavant*:

The Board has consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate even though a broader unit might also be appropriate. This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted.

Id. at 1218 (citations omitted).

The Union argues that under the accretion standard, the Springfield drivers have little or no separate group identity since two of the drivers were formerly Decatur Unit members and another employee began his training in Decatur. As for whether the Decatur Unit and Springfield drivers share an overwhelming community of interest, the Union contends that the Decatur Unit hooks, hauls, and drops the same product as the Springfield drivers, and that drivers from both locations perform the same services. The Union notes that the wages between the Decatur Unit and Springfield drivers is comparable. Also, the Decatur and Springfield drivers have the same qualifications, skills, and training, as they are both required to have a commercial drivers license and HAZMAT and tanker qualifications. In addition, the Union contends that there is frequency of contact or interchange among the employees from both locations because all drivers go through orientation and quarterly safety meetings at the Decatur facility. The Union also argues that Springfield Drivers regularly see other drivers at fuel stations, plants, and terminals. As for geographic proximity, the Union argues that because Decatur Unit City Drivers drive within the “greater Decatur area,” which is a fifty-mile radius around Decatur, that theoretically Decatur City Drivers could pick up and drop off trailers at the Springfield Terminal, which is located 45 miles from the Decatur Terminal. The Union also argues that since the Springfield Terminal was established as a relay point, it is similar to the Taylorville Terminal that operated from 2001 through 2005, which was included in the parties’ collective bargaining agreements for the 2001 through 2004 term and 2004 through 2007 term. The Union also points to common supervision of the Decatur and Springfield drivers by Remote Terminal Manager Joshua Wilson and that both Decatur and Springfield drivers are dispatched by Central Dispatch in Decatur.

The Employer argues that the Union has not satisfied its burden to prove that the Springfield drivers should be accreted into the Decatur Unit. The Employer notes that although the Springfield drivers and Decatur drivers are currently commonly supervised by Remote

Terminal Manager Joshua Wilson, this is a temporary arrangement until a new supervisor is hired at Decatur and Springfield becomes fully staffed. The Employer acknowledges that its operations are high integrated, especially with centralized dispatching; however, there is no interchange or substitution of drivers between the Decatur and Springfield Terminals. Three out of the five Springfield drivers are new hires with no previous work experience at the Decatur Terminal. Also, the limited work contacts between the Springfield drivers and Decatur drivers is no different or greater than the work contacts with drivers assigned to the Employer's other terminals. The Employer also notes that there are differences in the wage rates and benefits for the Decatur and Springfield drivers, and that the geographic separation of the two locations is a factor against accretion. In addition, the Employer argues that the voluntary recognition of the Union as the representative of the Taylorville drivers as part of the Decatur Unit from 2001 to 2005 is distinguishable from the circumstances leading to the creation of the Springfield Terminal.

In the present case, the Union has failed to carry its burden of showing that the Springfield Terminal must be accreted into the existing bargaining unit. Similar to in *Passavant*, the Springfield facility would constitute a presumptively appropriate bargaining unit standing alone, and the record does not demonstrate that the Springfield employees share no separate identity or have such an "overwhelming" community of interest with the existing bargaining unit such that accretion is appropriate.

The evidence does not support a finding that the Springfield employees have no separate identity from the Decatur Unit. As was discussed above, although one Springfield employee transferred from Decatur at his request, the other four Springfield employees hired in directly to the Springfield Terminal. Despite another Springfield employee's previous work experience at the Decatur Terminal, he had not been employed at the Decatur Terminal for almost six months before starting work at the Springfield Terminal. Also, the use of one employee as a driver trainer at Springfield when he also served as one at Decatur is not a unique identifying fact since the use of driver trainers is common among the Employer's other remote terminals. Also, although one employee began his training in Decatur, many of the Employer's drivers from its other non-union terminals begin their training in Decatur before working in their designated terminal.

The evidence also does not support a finding that the Springfield employees share an overwhelming community of interest with the Decatur Unit. Although the Employer has a centralized organizational structure that oversees functions of the Decatur Terminal and Springfield Terminal, such as hiring and central dispatch, this centralized administration also oversees the Employer's other non-union terminals. For instance, Central Dispatch in Decatur dispatches all drivers for the Employer regardless of location. As for geographical proximity, the 45-mile geographic separation of the Springfield Terminal and Decatur Terminal makes the Springfield Terminal a presumptively appropriate unit apart from the Decatur Unit. As for the working conditions of the employees at both terminals, the wages and mileage rates for the Springfield drivers is generally higher than those for those for the Decatur Unit. As for employee benefits, the Decatur Unit's benefits are negotiated and set out in their collective bargaining agreement, while the Springfield employees are offered the same benefits as the Employer's other non-union employees. Although the Employer allowed Employee McGowan to maintain

his seniority and benefits and pension plan that he had prior to transferring to Springfield, the other new hires for Springfield do not have the same benefits plan as McGowan. Also, the Decatur Unit is governed by the collective bargaining agreement between the parties, while the Springfield employees are subject to the Employer's Employee Handbook similar to the Employer's non-union employees. In addition, although the general skills and functions of the Springfield and Decatur employees as drivers may be similar, they are also similar for all of the Employer's drivers at all of its other non-union facilities. The types of products and driver routes varies each day based on the Employer's business needs fleet wide, and their customers vary depending on geographic location. Although the Springfield drivers share similar qualifications, skills, and training as the Decatur Unit, this is also the case for drivers at the Employer's other remote terminals. As was discussed above, training is often completed at the Decatur Terminal regardless of a driver's work location and drivers from other terminals also attend the safety meetings at Decatur. As for collective bargaining history, there is no previous collective bargaining history between the parties for the Springfield Terminal. The Union tries to analogize the opening of the Springfield Terminal to the Taylorville Terminal back in 2001 when the Employer voluntarily recognized the Union as the bargaining representative of those employees; however, the circumstances are different. All of the Taylorville drivers were transferred from existing Decatur Unit members, and the Taylorville Terminal was established as a relay between Decatur and St. Louis Terminals. Meanwhile, new employees are being hired into the Springfield Terminal, and the Springfield Terminal serves as a relay point for Peoria, Illinois; Quincy, Illinois; and Decatur, Illinois terminals.

As noted in *Archer Daniels Midland* and *Towne Ford*, the two most important community of interest factors are common day-to-day supervision and employee interchange. The evidence shows that the day-to-day operations at the Springfield Terminal are overseen by Remote Terminal Manager Joshua Wilson, who although is currently based out of the Decatur Terminal, also has supervisory authority over ten of the Employer's non-union satellite terminals. In other words, Wilson's supervision of the Springfield Terminal and Decatur Terminals is not confined to just those two terminals and there are future plans for Wilson to transition away from supervising the Decatur Terminal all together. As the Employer's Terminal Manager out of the Decatur Terminal, Raymond Neff manages the Decatur Terminal and the Springfield Terminal, in addition to at least five other of the Employer's non-union terminals; however, Neff does not handle the day-to-day supervision of the Springfield employees. In addition, the Decatur Unit has City Supervisors who do not supervise the Springfield Terminal. Finally, there is no significant interchange between the Springfield Terminal and Decatur Terminal. For instance, if a Springfield driver is unavailable to complete an assignment, Central Dispatch will first consider other drivers in Springfield to fill the assignment and if no one is available, then Central Dispatch will consider a driver from any other of the Employer's terminals (not just from Decatur). Also, although one employee testified that he maintains contact with drivers in many of the Employer's locations, including Decatur, St. Louis, and Peoria because he has trained drivers in many different locations, this is incidental of drivers performing their routes.

In weighing the factors identified above, I find that the record evidence clearly weighs against finding that the Springfield employees have no separate identity and must be merged into the existing bargaining unit. The Springfield and Decatur employees do not share an

overwhelming community of interest, as evidenced by many factors including the minimal common day-to-day supervision and little interchange between those employees. The Springfield location would appear to be an appropriate bargaining unit unto itself, the employees there have a separate identity, and the Union has failed to carry its burden of proving otherwise.

V. ORDER

Accordingly, it is concluded that clarification of the bargaining unit is not warranted. The Petition filed in this matter is hereby dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on March 27, **2015**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically at www.nlrb.gov.⁶ If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁷

⁶ To file the request for review electronically, go to the Agency's website at www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

⁷ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

SIGNED IN Indianapolis, Indiana, this 13th day of March 2015.

A handwritten signature in black ink, appearing to read "Rik Lineback". The signature is fluid and cursive, with the first name "Rik" being more prominent and the last name "Lineback" written in a continuous script.

Rik Lineback
Regional Director
National Labor Relations Board
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Peoria, IL 61602-1246